

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 13714, of Solomon S. Colker, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Chief of the Zoning Review Branch, dated August 7, 1981, denying an application for a Certificate of Occupancy on the grounds that the use of an office for an "accountant, financial analyst and economist" does not constitute an office of a professional person in an SP-2 District at the premises 1330 New Hampshire Avenue, N.W., (Square 97, Lot 2058)

HEARING DATE: May 12, 1982
DECISION DATE: July 7, 1982

FINDINGS OF FACT:

1. The subject property is located on the southwest corner of the intersection of New Hampshire Avenue and O Street, N.W. and is known as Suite 114 of premises 1330 New Hampshire Avenue, N.W. It is zoned SP-2.
2. The property is developed with a 237-unit condominium building. Of the 237 units, 216 are used for residential purposes and the remaining twenty-one units are used for offices. The office units are located primarily on the first floor and basement levels of the condominium. The previous use of Suite 114 was as an artist's studio occupied by Graphics by Gallo. No certificate of occupancy was issued for that use.
3. The appellant has maintained offices in commercial office buildings in the District of Columbia since 1953. The appellant was last located at 1990 N Street, N.W. The appellant's rent at that location quadrupled when his lease terminated which prompted him to look for another location and eventually led to the purchase of the subject premises. The appellant moved his offices to the subject location in May of 1980. The appellant testified that the seller of the property informed him in May of 1981 that he must apply for a certificate of occupancy.
4. The appellant applied for a Certificate of Occupancy to use the subject premises as a professional office for an accountant, financial analyst, and economist on July 28, 1981. By letter dated August 7, 1981, the Chief of the Zoning Review Branch informed the appellant that the application for a Certificate of Occupancy to use the premises for offices of an accountant, financial analyst and economist was disapproved. The letter indicated further that "...an individual certified public accountant would qualify as a permitted use in the SP-2 District ..."

5. An office for a chancery, international agency, non-profit organization, labor union, architect, dentist, doctor, engineer, lawyer, or similar professional person is permitted in the SP-2 District, if approved by the Board pursuant to Paragraph 4101.44.

6. The sole question for the Board to determine in this appeal is whether an "accountant, financial analyst and economist" constitutes a "similar professional person," as alleged by the appellant.

7. The appellant, Solomon S. Colker, is licensed by the state of Maryland as a certified public accountant (Maryland CPA License No. 890) and is a chartered financial analyst (Charter No. 1545). The appellant obtained a Bachelor of Science degree in Business Administration from American University. The appellant participates in continuing education programs offered by the D.C. Institute of Certified Public Accountants, of which he is a member in good standing.

8. As a certified public accountant, the appellant is governed by a code of ethics. Violation of those standards would result in disciplinary action or revocation of the appellant's license.

9. The appellant also has been a chartered financial analyst since 1967. A chartered financial analyst is required to sit for a three-part examination which is given over a period of three years. Upon successful completion of this examination, the appellant joined the Institute of Certified Financial Analysts. The standards of conduct which pertain to a chartered financial analyst are promulgated and administered by the Institute of Certified Financial Analysts.

10. The appellant testified that he offers financial and economic services to out-of-town clients which utilize his skills as both a certified public accountant and a chartered financial analyst.

11. The appellant offered no testimony or evidence concerning his standing or qualifications as an economist.

12. The appellant testified that his services do not seek or attract off-the-street clientele, that he generally meets with clients in their offices, that virtually all of his clients are located out of town, that he has no need to use the parking spaces or lobby which serve the subject building, and that the office is used basically for doing research and preparing documents for his clients.

13. The Zoning Administrator testified that in determining what constitutes a "similar professional person," he reviewed the uses specifically cited in Paragraph 4101.44 and determined what characteristics were common to all of them. The Zoning Administrator cited three criteria for a professional, as follows:

- a. The person must be licensed by a state or the District of Columbia;
- b. The person must be bound by a code of professional ethics; and,
- c. The person must have professional education.

The Zoning Administrator testified further that the above-mentioned criteria were considered by the Board in BZA Case No. 12845 and that the decision of the Zoning Administrator using those criteria was upheld. Subsequently, the D.C. Court of Appeals affirmed the decision of the Board.

14. The Zoning Administrator testified that, in his opinion, only the certified public account meets all three of the criteria cited. The Zoning Administrator further testified that the chartered financial analyst and the economist are not licensed. In addition, an economist is not bound by a code of professional ethics. Therefore, neither a chartered financial analyst nor an economist are considered as professionals within the meaning of the Zoning Regulations. The Board concurs.

15. Advisory Neighborhood Commission 2B, by letter dated April 4, 1982, stated that at its meeting of March 10, 1982, the ANC voted unanimously to oppose the appeal. The ANC supported the guidelines set forth by the Zoning Administrator as to the screening of applicants for use of SP office buildings. The ANC stated that the square in which the subject premises are located is "overwhelmingly residential" and that the proposed use would not be in harmony with existing uses on neighboring property. The Board concurs with the ANC as to the acceptance of the standards of professional persons as enunciated by the Zoning Administrator.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the Zoning Administrator, in setting forth the criteria for similar professional persons to meet, has appropriately determined what characteristics are common to the professionals specifically listed in Paragraph 4101.44 and as upheld by this Board and the Court of Appeals in BZA Appeal No. 12845.

Based on the foregoing findings of fact and the record, the Board concludes that "chartered financial analyst and economist" do not meet the criteria of a professional person as enunciated and applied by the Zoning Administrator. While both activities may meet the educational standards required, they do not meet the tests of professional licensing and the economist is not governed by specific ethical standards.

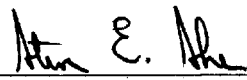
The Board noted that the Zoning Administrator advised the appellant that a certified public accountant only satisfied the criteria for a professional person, as was pointed out in the August 7, 1981, letter from the Chief of the Zoning Review Branch. However, consideration of that sole use was not before the Zoning Administrator and is not presently before the Board.

The Board concludes that it has afforded the great weight required by statute to the issues and concerns of the Advisory Neighborhood Commission. Accordingly, it is ORDERED that the Appeal is DENIED and the decision of the Zoning Administrator is UPHELD.

VOTE: 4-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune and Charles R. Norris to deny; Douglas J. Patton not voting; not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

JAN 18 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."